

Committee Opinion
May 16, 1996

LEGAL ETHICS OPINION 1682

PARTICIPATION BY
COMMONWEALTH'S ATTORNEY
AND/OR DEFENSE COUNSEL ON
BOARD WHICH WILL SET POLICIES
AND STANDARDS TO BE APPLIED TO
INDIVIDUALS PROSECUTED OR
DEFENDED BY THOSE ATTORNEYS.

You have presented a hypothetical situation in which a Commonwealth's Attorney or a defense attorney participates on the Community Criminal Justice Board (CCJB). You indicate that Article 2, Title 53.1 of the Code of Virginia established the Comprehensive Community Corrections Program (CCCP) to permit localities to establish community based programs for defendants who are considered suitable candidates for diversion programs or alternatives to incarceration in a local correctional facility. You further state that the CCJB is responsible for the development, implementation, operation and evaluation of the policies and procedures pertaining to implementing the CCCP. Unlike its predecessor (the Community Corrections Resource Board) the CCJB does not make findings or recommendations in individual cases.

By statute, the Commonwealth's Attorney is required to sit on the CCJB. You have asked the committee to opine as to the ethical propriety of a Commonwealth's Attorney or a defense attorney participating on a CCJB, if the policies and standards set by that Board may be applied to individuals prosecuted or represented by those attorneys.

The appropriate and controlling Disciplinary Rules relative to your inquiry are Disciplinary Rules DR:4-101(A), DR:8-101(A)(1) and (2), and DR:9-101(C).

The Committee has previously opined that it is not per se improper for a prosecuting or defense attorney to sit on such a Board. See LE Op. 1268.

In the facts you present, the committee believes, as it opined in LE Op. 1268, that it is not improper per se for a Commonwealth's Attorney or a defense attorney to sit on the CCJB. Nevertheless, the committee believes that the attorney in the instant hypothetical must still be cognizant of the cited controlling Disciplinary Rules. First, under Disciplinary Rule 4-101(A), the Commonwealth's Attorney and the defense attorney particularly must be careful that they do not reveal client confidences and secrets to the CCJB. Secondly, pursuant to Disciplinary Rules 8-101(A)(1) and (2), the same attorney may not use the CCJB to obtain a special advantage for himself, a client, or to influence a tribunal. Thirdly, the attorney shall not state or imply to his client that the attorney can improperly influence another CCJB member or any tribunal. [See DR:9-101(C)]. This being said, the committee opines that it is not improper for a Commonwealth's Attorney or defense attorney to be a member of the CCJB.

The committee observes that the attorneys in your hypothetical are even less likely to be in violation of the Disciplinary Rules than an attorney on the CCRB in LE Op. 1268,

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since unlike the CCRB, the CCJB does not make findings or recommendations in individual cases. Thus, the committee feels that since the CCJB evaluates and monitors community plans and does not determine a particular defendant's eligibility for a program, there is an additional safeguard that was lacking in the old CCRB.